THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.21776 of 2006

Dated: 23-10-2006

Between:

M/s National Glass Industries, Hyderabad.

..... PETITIONER

AND

The Central Power Distribution Company of A.P. Limited, Ragna Reddy District and others.

.....RESPONDENTS

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ORDER:

The petitioner is proprietary concern engaged in the business of glass toughening works in its premises situated in plot No.23 at Ranga Reddy District. It is availing power supply under service connection No.1024 (Category III). Respondent No.2 visited the petitioner's premises and on the premise that the meter is not functioning and that the recorded consumption is low, came to the conclusion that the petitioner is resorting to pilferage of energy. Accordingly, he was served with a provisional assessment order dated 09-02-2004 calling upon him to pay a sum of Rs.13,34,290/-, being the value of the energy pilfered by him. He was also advised that there is a provision of compounding the offence of theft of electricity and gave liberty to do so. He submitted a representation before the assigning authority, namely, the Superintending Engineer (Assignment), Hyderabad. The said authority passed orders reducing the value of the pilfered energy to Rs.7,09,100/-. He then approached the appellate authority, the Chief General Manager of Andhra Pradesh Central Power Distribution Company Limited (APCPDCL), Hyderabad. The appellate authority passed orders on

31-08-2004 holding that the petitioner indulged in pilferage of energy and estimated the loss sustained by APCPDCL at Rs.4,12,635/-. By the said order, the petitioner was requested to pay said amount within thirty days from the date of receipt of said order. After receiving said order, the petitioner did not pay the amount. Therefore, respondent No.1 issued attachment notice dated 09-08-2006 requesting the petitioner to pay an amount of Rs.5,12,425/- and further informed the petitioner that action would be initiated under the provisions of the Andhra Pradesh Revenue Recovery Act, 1864. Assailing the attachment notice dated 09-08-2006, the petitioner filed instant writ petition.

The learned counsel for the petitioner strenuously contends that under Section 126(5) of the Electricity Act, 2003 (the Act, for brevity), the assessing officer cannot assess/determine the value of the pilfered energy for a period exceeding six months in the category of services other than domestic/agricultural. Therefore, he submits that the assessment made by the appellate authority for the period from February, 2003 to February, 2004 is unsustainable and consequently the impugned notice is arbitrary.

Section 126(5) of the Act reads as under.

> If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, it shall be

> presumed that such unauthorized use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place.

A reading of the above provision would show that the same contains a legal fiction as to the presumption that can be drawn by assessing officer when unauthorized use of electricity has taken place. It further lays down that unless the person produces evidence to show that the unauthorized use of electricity is not beyond a specified period, in the absence of any other material, the assessing officer can presume that such unauthorized use continued for a period of three months immediately preceding the date of inspection in case of domestic/agricultural services and for a period of six months in case of other services. In a given case where there is unimpeachable evidence to show that the consumer resorted to unauthorized use of electricity or theft, such material is the basis and Section 126(5) of the Act does not bar to assess the value of the electricity pilfered based on such details.

The learned counsel for the petitioner did not raise any other contention. The writ petition is misconceived.

The writ petition is, therefore, dismissed. No costs.

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V.V.S.RAO, J

23rd October, 2006
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